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HOUSE BILL 607 By
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SENATE BILL 1555
By Ford J

AN ACT to amend Tennessee Code Annotated, Title 36, Chapter 1, relative to adoption.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 36, Chapter 1, is amended by adding Sections 2 through 11 as a new part.

SECTION 2. This act may be cited as "An Act to Permit Standby Adoptions."

SECTION 3. As used in this act:

(1) "Child" means a person under eighteen (18) years of age subject to adoption under this act.

(2) "Related Child" means a child subject to adoption where either or both of the adopting parents stands in any of the following relationships to the child by blood or marriage: parent, grandparent, brother, sister, step-parent, step-grandparent, step-brother, step-sister, uncle, aunt, great-uncle, great-aunt, or cousin of first degree. A child whose parent has executed a final irrevocable consent to adoption or a final irrevocable surrender for purposes of adoption, or whose parent has had his or her

parental rights terminated, is not a related child to that person, unless the consent is determined to be void or revoked under § 36-1-112.

(3) "Agency" means a public child welfare agency or a licensed child welfare agency.

(4) "Parent" means the father or mother of a legitimate or illegitimate child. A person who has executed a final and irrevocable consent to adoption or a final and irrevocable surrender for purposes of adoption, or whose parental rights have been terminated by a court, is not a parent of the child who was the subject of the consent or surrender, unless the consent is void or revoked under § 36-1-112.

(5) A person is available for adoption when the person is:

(A) a child who has been surrendered for adoption to an agency and to whose adoption the agency has thereafter consented;

(B) a child to whose adoption a person authorized by law, other than his parents, has consented, or to whose adoption no consent is required;

(C) a child who is in the custody of persons who intend to adopt him through placement made by his parents; or

(D) a child for whom a parent has signed a specific consent pursuant to § 36-1-117.

(6) "Standby adoption" means an adoption in which a terminally ill parent consents to custody and termination of parental rights to become effective upon the occurrence of a future event, which is either the death of the terminally ill parent or the request of the parent for the entry of a final judgment of adoption.

(7) "Terminally ill parent" means a person who has a medical prognosis by a physician licensed to practice medicine in this state that the person has an incurable and irreversible condition which will lead to death.

(8) The singular includes the plural and the plural includes the singular and "male" includes "female", as the context of this act requires.

SECTION 4.

(a) A proceeding to adopt a child, other than a related child, shall be commenced by the filing of a petition within thirty (30) days after such child has become available for adoption, provided that such petition may be filed at a later date by leave of court upon a showing that the failure to file such petition within such thirty (30) day period was not due to the petitioners' culpable negligence or their willful disregard of the provisions of this section. A petition to adopt an adult or a related child may be filed at any time. A petition for adoption may include more than one (1) person sought to be adopted.

(b) A petition for standby adoption shall conform to the requirements under this section with respect to petition contents, verification, and filing. The petition for standby adoption also shall state the facts concerning the consent of the child's parent to the standby adoption. A petition for standby adoption shall include the information in subsection (c) of this section if the petitioner seeks to adopt a child other than a related child. A petition for standby adoption shall include the information in subsection (d) of this section if the petitioner seeks to adopt a related child or adult.

(c) A petition to adopt a child other than a related child shall state:

- (1) The full names of the petitioners and, if minors, their respective ages;
- (2) The place of residence of the petitioners and the length of residence of each in this state immediately preceding the filing of the petition;
- (3) When the petitioners acquired, or intend to acquire, custody of the child, and the name and address of the persons or agency from whom the child was or will be received;

(4) The name, the place and date of birth if known, and the gender of the child sought to be adopted;

(5) The relationship, if any, of the child to each petitioner;

(6) The names, if known, and the place of residence, if known, of the parents; and whether such parents are minors, or otherwise under any legal disability. The names and addresses of the parents shall be omitted and they shall not be made parties defendant to the petition if:

(A) the rights of the parents have been terminated by a court of competent jurisdiction; or

(B) if the child has been surrendered to an agency; or

(C) if the parent or parents have been served with the notice provided in Section 6 and said parent or parents have filed a disclaimer of paternity as therein provided or have failed to file such declaration of paternity or a request for notice;

(7) If it is alleged that the child has no living parent, then the name of the guardian, if any, of such child and the court which appointed such guardian;

(8) If it is alleged that the child has no living parent and that no guardian of such child is known to petitioners, then the name of a near relative, if known, shall be set forth, or an allegation that no near relative is known and on due inquiry cannot be ascertained by petitions;

(9) The name to be given the child or adult;

(10) That the person or agency, having authority to consent, has consented, or has indicated willingness to consent, to the adoption of the child by the petitioners, or that the person having authority to consent is an unfit person and the ground therefor, or that no consent is required.

(11) Whatever orders, judgments or decrees have heretofore been entered by any court affecting adoption or custody of the child, or the adoptive, custodial or parental rights of either petitioner, including the prior denial of any petition for adoption pertaining to such child, or to the petitioners, or either of them.

(d) A petition to adopt a related child shall include the information specified in subparagraphs (1), (2), (4), (5), (6), (9) and (11) of subsection (c) and a petition to adopt an adult shall contain the information required by subparagraphs (1), (2) and (9) of subsection (c) in addition to the name, place, date of birth and sex of such adult.

(e) The petition shall be verified by the petitioners.

(f) Upon the filing of the petition the petitioners shall furnish the clerk of the court in which the petition is pending such information not contained in such petitions as shall be necessary to enable the clerk of such court to complete a certificate of adoption as hereinafter provided.

SECTION 5.

(a) Within ten (10) days after the filing of a petition for the adoption or standby adoption of a child other than a related child, the court shall appoint a licensed child placing agency or licensed clinical social worker or the department, to investigate accurately, fully and promptly, the allegations contained in the petition; the character, reputation, health and general standing in the community of the petitioners; the religious faith of the petitioners and, if ascertainable, of the child sought to be adopted; and whether the petitioners are proper persons to adopt the child and whether the child is a proper subject of adoption. The investigation required under this section shall include a criminal background check with a review of fingerprints by state and federal authorities. The criminal background check required by this section shall include a listing of when, where and by whom the criminal background check was prepared. The criminal

background check required by this section shall not be more than two (2) years old.

Neither a clerk of the circuit court nor a judge may require that a criminal background check or fingerprint review be filed with, or at the same time as, an initial petition for adoption.

(b) The court shall determine whether the costs of the investigation shall be charged to the petitioners. The information obtained as a result of such investigation shall be presented to the court in a written report. The results of the criminal background check required under subsection (a) shall be provided to the court for its review. The court may, in its discretion, weigh the significance of the results of the criminal background check against the entirety of the background of the petitioners. The court, in its discretion, may accept the report of the investigation previously made by a licensed child placing agency, if made within one (1) year prior to the entry of the judgment. Such report shall be treated as confidential and withheld from inspection unless findings adverse to the petitioners or to the child sought to be adopted are contained therein, and in that event the court shall inform the petitioners of the relevant portions pertaining to the adverse findings. In no event shall any facts set forth in the report be considered at the hearing of the proceeding, unless established by competent evidence. The report shall be filed with the record of the proceeding. If the file relating to the proceeding is not impounded, the report shall be impounded by the clerk of the court and shall be made available for inspection only upon order of the court.

(c) Such investigation shall not be made when the petition seeks to adopt a related child or an adult unless the court, in its discretion, shall so order. In such an event the court may appoint a person deemed competent by the court.

SECTION 6.

(a) All persons named in the petition for adoption or standby adoption, other than the petitioners and any party who has previously either denied being a parent or whose

rights have been terminated pursuant to § 36-1-113, but including the person sought to be adopted, shall be made parties defendant by name, and if the name or names of any such persons are alleged in the petition to be unknown such persons shall be made parties defendant under the name and style of "All whom it may concern."

(b) In all such actions petitioner or his attorney shall file, at the office of the clerk of the court in which the action is pending, an affidavit showing that the defendant resides or has gone out of this state, or on due inquiry cannot be found, or is concealed within this state, so that process cannot be served upon him, and stating the place of residence of the defendant, if known, or that upon diligent inquiry his place of residence cannot be ascertained, the clerk shall cause publication to be made in some newspaper published in the county in which the action is pending.

(c) If there is no newspaper published in that county, then the publication shall be in a newspaper published in an adjoining county in this state, having a circulation in the county in which such action is pending. In the event there is service on any of the parties by publication, the publication shall contain notice of pendency of the action, the name of the person to be adopted and the name of the parties to be served by publication, and the date on or after which default may be entered against such parties. Neither the name of petitioners nor the name of any party who has either surrendered said child, has given their consent to the adoption of the child, or whose parental rights have been terminated by a court of competent jurisdiction shall be included in the notice of publication.

(d) The clerk also shall, within ten (10) days of the first publication of the notice, send a copy thereof by mail, addressed to each defendant whose place of residence is stated in such affidavit. The certificate of the clerk that he sent the copies pursuant to this section is evidence that he has done so. Except as provided in this section pertaining to service by publication, all parties defendant shall be notified of the

proceedings in the same manner as is now or may hereafter be required in other civil cases or proceedings. Any party defendant who is of age of fourteen (14) years or upward may waive service of process by entering an appearance in writing. The form to be used for publication shall be substantially as follows:

(ADOPTION NOTICE)

STATE OF _____

COUNTY OF _____

SS.[Circuit Court] of _____

In the matter of the Petition for the Adoption of _____, a (male or female child).

Adoption No. _____

To _____ (whom it may concern or the named parent)

Take notice that a petition was filed in the Circuit Court of _____, for the adoption of a child named _____.

Now, therefore, unless you _____, and all whom it may concern, file your answer to the Petition in the action or otherwise file your appearance therein, in the said Circuit Court of _____, on or before the _____ day of _____, a default may be entered against you at any time after that day and a judgment entered in accordance with the prayer of said Petition.

Dated _____, State, _____ Clerk.

(Name and address of Attorney for Petitioners) _____

(e) The sole purpose of notice under this section shall be to enable the person receiving notice to appear in the adoption proceedings to present evidence to the court relevant to the best interests of the child.

SECTION 7. Consent may be given to a standby adoption by a terminally ill parent to become effective when the terminally ill parent of the child dies or that parent requests that the final judgment of adoption be entered.

SECTION 8.

(a) The parent of a child may execute a consent to standby adoption by a specified person or persons. The form of consent required for the standby adoption of a born child effective at a future date when the terminally ill parent of the child dies or requests that a final judgment of adoption be entered shall be substantially as follows:

FINAL AND IRREVOCABLE CONSENT TO STANDBY ADOPTION

I, _____, (relationship, e.g., mother or father) of _____, a (male or female) child, state:

That the child was born on _____ at _____

That I reside at _____, County of _____, and State of _____

That I am of the age of _____ years.

That I hereby enter my appearance in this proceeding and waive service of summons on me in this action only.

That I do hereby consent and agree to the standby adoption of the child, and that I have not previously executed a consent or surrender with respect to the child.

That (I am terminally ill) (the child's other parent is terminally ill).

That I wish to and understand that by signing this consent I do irrevocably and permanently give up all custody and other parental rights I have to the child, effective upon (my death) (the child's other parent's death) or upon (my) (the terminally ill parent's) request for the entry of a final judgment for adoption if _____ (specified person or persons) adopt my child.

I understand my child will be adopted by _____ (specified person or persons) only and that I cannot, under any circumstances, after signing this document, change my mind and revoke or cancel this consent or obtain or recover custody or any other rights over my child if _____ (specified person or persons) adopt my child.

I understand that this consent to standby adoption is valid only if the petition for standby adoption is filed and that if _____ (specified person or persons), for any reason, cannot or will not file a petition for standby adoption or if his, her, or their petition for standby adoption is denied, then this consent is void. I have the right to notice of any other proceeding that could affect my parental rights.

That I have read and understand the above and I am signing it as my free and voluntary act.

Dated _____ (insert date).

(b) If the consent of more than one (1) person is required, then each such person shall execute a separate consent. A separate consent shall be executed for each child.

(c) If the parent consents to a standby adoption by two (2) specified persons, then the form shall contain two (2) additional paragraphs in substantially the following form:

If _____ (specified persons) obtain a judgment of dissolution of marriage before the judgment for adoption is entered, then _____ (specified person) shall adopt my child.

I understand that I cannot change my mind and revoke this consent or obtain or recover custody of my child if (specified persons) obtain a judgment of dissolution of marriage and _____ (specified person) adopts my child. I understand that I cannot change my mind and revoke this consent if _____ (specified persons) obtain a judgment of dissolution of marriage before the adoption is final. I understand that this consent to adoption has no effect on who will get custody of my child if _____ (specified person) obtain a judgment of dissolution of marriage after the adoption is final. I understand that if either _____ (specified persons) dies before the petition to adopt my child is granted, then the surviving person may adopt my child. I understand that I cannot change my mind and revoke this consent or obtain or recover custody of my child if the surviving person adopts my child.

(d) A consent to standby adoption by specified persons on this form shall have no effect on a court's determination of custody or visitation under chapter 4 of this title if the marriage of the specified persons is dissolved before the adoption is final.

(e) The form of the Certificate of Acknowledgement for a Final and Irrevocable Consent for Standby Adoption shall be substantially as follows:

CERTIFICATE OF ACKNOWLEDGEMENT FOR A FINAL AND IRREVOCABLE
CONSENT FOR STANDBY ADOPTION

STATE OF _____

SS. COUNTY OF _____

I, _____ (name of Judge or other person)
_____, (official title, name and address), certify that
_____, personally known to me to be the same person whose name is
subscribed to the foregoing Final and Irrevocable Consent to Standby Adoption, appeared

before me this day in person and acknowledged that (she)(he) signed and delivered the consent as (her)(his) free and voluntary act, for the specified purpose.

I have fully explained that this consent to adoption is valid only if the petition to adopt is filed, and that if the specified person or persons, for any reason, cannot or will not adopt the child or if the adoption petition is denied, then this consent will be void. I have fully explained that if the specified person or persons adopt the child, by signing this consent (she)(he) is irrevocably and permanently relinquishing all parental rights to the child, and (she)(he) has stated that such is (her)(his) intention and desire.

Dated _____

Signature _____

(f) If a consent to standby adoption is executed in this form, the consent shall be valid only if the specified person or persons adopt the child. The consent shall be void if:

(1) the specified person or persons do not file a petition for standby adoption of the child; or

(2) a court denies the standby adoption petition.

The parent shall not need to take further action to revoke the consent if the standby adoption by the specified person or persons does not occur.

SECTION 9. In standby adoption cases, as soon as practicable after the filing of a petition for adoption, the court shall hold a hearing for the following purposes:

(a) The court shall appoint a licensed attorney other than the attorney for the department, to serve as guardian ad litem to represent a child sought to be adopted.

The guardian ad litem shall have power to consent to the adoption of the child, if consent is required.

(b) The court shall appoint a guardian ad litem for all named minors or defendants who are persons under legal disability, if any.

(c) The court lacks jurisdiction to proceed on the petition for standby adoption if the child has a living parent, adoptive parent, or adjudicated parent whose rights have not been terminated and whose whereabouts are known, unless the parent consents to the standby adoption or, after receiving notice of the hearing on the standby adoption

petition, fails to object to the appointment of a standby adoptive parent at the hearing on the petition.

(d) The court shall investigate as needed for the welfare of the child and shall determine whether the petitioner or petitioners shall be permitted to adopt.

SECTION 10.

(a) If it is proved to the satisfaction of the court, after such investigation as the court deems necessary, that the child's parent consents to or fails to object to the standby adoption and adoption by the petitioner will be for the welfare of the child, the court may enter an order for standby adoption. However, the consenting terminally ill parent's parental rights may not be terminated until consent becomes effective.

(b) The order for standby adoption shall be final as to all findings and shall be followed in the judgment of adoption unless the court finds by clear and convincing evidence that it is no longer in the best interest of the child for the adoption to be finalized.

(c) Once the standby adoptive parent receives knowledge of the death of the terminally ill parent, or the terminally ill parent requests that a final judgment for adoption be entered, the standby adoptive parent shall have sixty (60) days to apply for a judgment for adoption.

SECTION 11. A standby adoption judgment may be entered upon notice of the death of the terminally ill parent or upon the terminally ill parent's request that a final judgment for adoption be entered. The notice must be provided to the court within sixty (60) days after the standby adoptive parent's receipt of knowledge of death of the terminally ill parent or the terminally ill parent requests that a final judgment for adoption be entered. If the court finds that adoption is for the welfare of the child and that there is a valid consent, including consent for standby adoption, which is still in effect, or that no consent is required, a judgment for adoption

shall be entered unless the court finds by clear and convincing evidence that it is no longer in the best interest of the child for the adoption to be finalized.

SECTION 12. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 13. This act shall take effect January 1, 2002, the public welfare requiring it.